

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ERNEST BROOKS,

Petitioner,

ORDER

18-cv-7-bbc
02-cr-27-bbc

v.

UNITED STATES OF AMERICA,

Respondent.

On January 31, 2018, I dismissed petitioner Ernest Brooks's petition for a writ of habeas corpus under 28 U.S.C. § 2255 after concluding that petitioner was attempting to bring a successive collateral attack without first obtaining certification from the court of appeals. Petitioner filed a notice of appeal and on March 29, 2018, I denied petitioner leave to proceed in forma pauperis on appeal. However, I did not address whether to grant a certificate of appealability to petitioner.

Under Rule 11 of the Rules Governing Section 2255 Proceedings, the court must issue or deny a certificate of appealability when entering a final order adverse to a defendant. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). This means that "reasonable jurists could debate whether (or, for that

matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted).

Although the rule allows a court to ask the parties to submit arguments on whether a certificate should issue, it is not necessary to do so in this case because the question is not close. No reasonable jurists would conclude that petitioner has made a substantial showing of a denial of a constitutional right.

ORDER

IT IS ORDERED that the January 31, 2018 order denying petitioner Ernest Brook's petition for a writ of habeas corpus, dkt. #3, is AMENDED to DENY petitioner a certificate of appealability. Petitioner may seek a certificate from the court of appeals under Fed. R. App. P. 22.

Entered this 17th day of May, 2018.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge